

Exhibit A

(Transcript of April 12, 2022 Telephonic Motion Hearing)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

SC STATE CONFERENCE OF THE)	
NAACP & TAIWAN SCOTT,)	
Plaintiffs,)	April 12, 2022
)	
-versus-)	3:21-3302
)	
THOMAS C. ALEXANDER, LUKE A.)	Charleston, SC
RANKIN, JAMES H. LUCAS, CHRIS)	
MURPHY, WALLACE H. JORDAN,)	
HOWARD KNAPP, JOHN WELLS,)	
JOANNE DAY, CLIFFORD J. ELDER,)	
LINDA McCALL, SCOTT MOSELEY,)	
Defendants.)	

TRANSCRIPT OF TELEPHONIC MOTION HEARING

BEFORE THE HONORABLE RICHARD M. GERGEL
UNITED STATES DISTRICT JUDGE
THE HONORABLE MARGARET B. SEYMOUR
SENIOR UNITED STATES DISTRICT JUDGE
THE HONORABLE TOBY J. HEYTENS
UNITED STATES APPELLATE JUDGE

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1 Tuesday, April 12, 2022

2 (Court was called to order at 3:01 PM)

3 JUDGE GERGEL: This is Judge Gergel are my
4 colleagues on the line?

5 JUDGE HEYTENS: This is Toby Heytens here as
6 well.

7 JUDGE GERGEL: Judge Heytens sounds like we have
8 everyone on the line.

9 JUDGE HEYTENS: This is Judge Heytens, Judge
10 Gergel and Judge Seymour are also on the line.

11 We are on the record in the case of South
12 Carolina State Conference of the NAACP vs. Alexander,
13 Civil Action No. 21-3302 to address the parties' various
14 motions to compel.

15 Could the counsel who will be speaking for the
16 plaintiffs please identify themselves for the record?

17 MR. HINDLEY: Good afternoon, Your Honors. This
18 is John Hindley of Arnold Porter on behalf of plaintiffs.

19 JUDGE HEYTENS: Good afternoon.

20 And could counsel who will be speaking this
21 afternoon for the House Defendants please identify
22 themselves?

23 MS. HOLLINGSWORTH: Good afternoon, Your Honor.
24 This is Jennifer Hollingsworth on behalf of the House
25 Defendants.

1 **JUDGE HEYTENS:** Great.

2 Please make sure to identify yourselves every
3 time you speak to make things a little bit easier on the
4 court reporter. And with that, I'm going to ask Judge
5 Gergel to address the issues on the motions to compel.

6 Judge Gergel?

7 **JUDGE GERGEL:** Thank you, Judge Heytens.

8 Folks, first of all, thank you for your briefing
9 on these issues. The panel has been through the various
10 briefs and we don't really need an argument-by-argument
11 objection because we have a good grasp of those. But
12 there are areas of clarifications we need. And I'm going
13 to raise questions, sort of have a list of questions that
14 I feel like we need a better understanding.

15 And let me just, first, in regard to the
16 defendant's motion to compel, that's Document No. 157,
17 there are a series of motions relating to the production
18 of issues concerning standing; and that is, whether the
19 plaintiff Conference of the NAACP has members in the
20 challenged districts.

21 Mr. Hindley, what have the plaintiffs actually
22 produced to defendants to establish standing?

23 **MR. HINDLEY:** Thank you, Your Honor. So the
24 issue of standing, as the Court made clear in its motion
25 to dismiss, we plan on a group of that upstanding at

1 trial. But so far to date we have produced the deposition
2 of President Murphy, who testified and affirmed the
3 standing members in each challenged district. And the
4 production we have made so far reveal emails and
5 communications that would also substantiate plaintiff's
6 standing.

7 **JUDGE GERGEL:** Have you produced the names of
8 individuals who you claim reside in those districts?

9 **MR. HINDLEY:** No, Your Honor. And unless
10 ordered by the Court, we don't plan to. Because we have
11 the First Amendment right not to produce member names.
12 And if need be, we can produce those names in camera. But
13 at this time we have not produced the names of members in
14 each challenged district.

15 **JUDGE GERGEL:** Well, let me just say this. You
16 know, when you assert standing, I respect the issue of
17 privacy. But there's got to be -- the defendants have a
18 right to be satisfied and not to be just told for the
19 first time at trial or to have some general certification.
20 So the question is, what can we do or what would be a
21 reasonable measure to protect the privacy of your members
22 but at the same time to demonstrate standing? Would a
23 provision of names subject to a confidentiality order with
24 an attorneys' eyes only for attorneys be sufficient?

25 **MR. HINDLEY:** Plaintiffs would be happy to

1 propose an affidavit on behalf of President Murphy.

2 **JUDGE GERGEL:** With the names of the
3 individuals? We don't need just a general certification.
4 We need names of people so that you can demonstrate you
5 actually have registered voters in the challenged
6 districts.

7 **MR. HINDLEY:** We are open to an in camera
8 review.

9 **JUDGE GERGEL:** I didn't ask in camera. The
10 panel's not really set up to verify residence and
11 registration and all that. And the defendants are
12 entitled to that. I'm trying to find a balance. The
13 panel is trying to find a balance between respecting the
14 privacy of membership, not interfering with association
15 rights, but at the same time for the plaintiff
16 organization to establish its standing. So I'm asking you
17 again, would a statement -- would the provision of the
18 names for attorneys' eyes only, a confidentiality order,
19 address your concerns about privacy?

20 **MR. HINDLEY:** Your Honor, unfortunately, I need
21 to defer to general counsel for the NAACP so that we can
22 have sign-off on whatever procedures we may have that
23 would allow the balance of equities to ensure that we
24 satisfy our standing requirements but ensure that --

25 **JUDGE GERGEL:** Well, is your counsel on the

1 telephone? I mean, we're here having an issue. We're
2 trying to address the issue, Mr. Hindley. I don't want to
3 give you a hard time. This shouldn't be that hard.

4 **MR. HINDLEY:** I think our counsel, Mr. Bryant,
5 will jump in and address your concerns, Your Honor.

6 **JUDGE GERGEL:** Okay.

7 Mr. Bryant, you want to address this issue?

8 **MR. BRYANT:** Yes, Judge Gergel. Chris Bryant
9 for plaintiffs. If the issue -- if it truly is -- so I
10 just -- setting the stage, we have -- it has been
11 represented to us that there may be a need to do some sort
12 of additional discovery or potentially subject potential
13 members or some set of members to fact depositions and
14 things of that nature. Counsel for NAACP is going through
15 the process right now of identifying individuals in
16 each -- the process has been -- individuals have been
17 identified. But the further processing, since it is our
18 understanding we have not received representations
19 otherwise, that individuals would be subject to not just
20 inquiries into their residences but also potentially
21 additional factual inquiries, looking for individuals who
22 are, frankly, willing to sit for depositions. To the
23 extent that the only thing that the Court is -- to the
24 extent that the Court is requiring the production of at
25 least, you know, at least one member in each district and

1 information to enable the person to ascertain, you know,
2 whether that person is a voter, that is something that --
3 and again, as Mr. Hindley I think said, counsel for --
4 general counsel is not on the phone. But to the extent
5 that that is the request, that is something that we can do
6 and will do and also recognize we have that need. But to
7 the extent that it's individuals who will then be subject
8 to some other form of heightened, I guess, factual
9 inquiry, that is -- that -- we need to figure something
10 out for that.

11 **JUDGE GERGEL:** Well, let's --

12 Ms. Hollingsworth, what are the defendants
13 seeking in standing beyond verifying that the organization
14 actually has a member in each challenged district?

15 **MS. HOLLINGSWORTH:** Yes, Your Honor. This is
16 Jennifer Hollingsworth. Our position on standing is it
17 does go to the elements of standing, both that they have a
18 registered voter in each of the challenged districts that
19 have suffered the personal harms that underlie the
20 allegations of the complaint. I don't believe there's
21 been any discussion that we would be taking full-fledged
22 discovery for all 29 of these individuals by any means.
23 But we certainly -- the threshold inquiry that we have yet
24 to have answered is are there registered voters, members
25 of the organization in each of these 29 districts that

1 have suffered the harms that are underlying the complaint?

2 **MR. BRYANT:** Judge Gergel, Chris Bryant for
3 plaintiffs. And I guess that is the -- this is sort of
4 the crux of the holdup and the dispute between the parties
5 on this issue. As Ms. Hollingsworth represented, she said
6 that the threshold inquiry is whether there were 29
7 individuals who lived in the district. And then the
8 important distinction is and suffered the individual
9 harms. It is plaintiff's -- underlying harms outlined in
10 the complaint.

11 It's plaintiff's position and understanding of
12 standing law in the area here that the simple fact of the
13 matter that an individual resides in the district and is a
14 registered voter would be sufficient to satisfy the
15 inquiry regarding standing. And that the sort of -- the
16 crux of the question is if each of these members are going
17 to be subject to fact discovery of some kind about the
18 impact of discrimination writ large and uninhabited --
19 onward from the requirements of the law, there's sort of a
20 heightened desire to protect --

21 **JUDGE GERGEL:** Why don't we do this. Why don't
22 we go ahead and identify individuals. And if the
23 defendants think there is a basis for organizational
24 standing beyond simply establishing members in each
25 district, we can brief that issue. But we need go ahead

1 and identify the registered voters that you claim are --
2 have standing in each of the districts. And from that
3 point, we can then address the next issue if anymore is
4 necessary. How long would it take you simply to produce
5 the names of individuals in the challenged districts?

6 **MR. BRYANT:** Judge, this is Chris Bryant
7 speaking again on behalf of plaintiffs. And I may rely on
8 my colleague, John Cusick, to correct me here. I believe
9 that there are at least one or more individuals whose been
10 identified in each district. And communications are
11 ongoing regarding whether they would be subject -- willing
12 to be subject to further communications. So I would think
13 that -- today is Tuesday. I would think it may not be a
14 24-hour thing. It may be a 24-hour thing. But it's one
15 of those things that the membership list is such that, you
16 know, even President Murphy does not have the entirety of
17 the membership list. So 48 hours I would think would be
18 sufficient.

19 **JUDGE GERGEL:** Ms. Hollingsworth, if you believe
20 that -- that the -- that you're entitled to do more for
21 organizational standing rather than just establishing
22 standing in the membership in the entity, I think you're
23 going to need to brief that issue. Let the other side
24 quickly respond. And then the Court will address it
25 whether any further discovery beyond that. I, frankly,

1 don't know the answer to that question. Normally, just
2 simply establishing members in the district is normally
3 what's required. If there's something more, I think
4 you're going to need to establish that. I'm not saying
5 that's not correct.

6 So if you want to depose people beyond getting
7 the base information establishing that they are registered
8 voters, and I think they can establish that on documents,
9 I think you're going to need to move -- what kind of time
10 would you need to make a decision whether you're going to
11 move for the right to take their depositions to go beyond
12 the issue of their membership and their residence in the
13 challenged districts?

14 **MS. HOLLINGSWORTH:** Yes, Your Honor. This is
15 Jennifer Hollingsworth. That is perfectly acceptable to
16 us. And I would -- if we have -- we certainly would have
17 it within the next 48 hours. And today is April 12th. If
18 we could have at most three business days? So however
19 that may fall, we can get three days to look it over,
20 ascertain our position, and then we would present briefing
21 to the Court if we want to request any additional
22 discovery beyond the corroborating information of the
23 residencies and the voting standards, that they're
24 registered voters in these districts.

25 **JUDGE GERGEL:** And what I would want the

1 plaintiffs to do within -- and if y'all want to do it,
2 some of my complex litigation, we -- we get like a
3 letter -- a letter rather than a formal brief several
4 pages long laying out the position. And we kind of
5 exchange letters as a way of not just burdening everybody.

6 So why don't we say that three days after the
7 plaintiffs provide the information, and they're going to
8 do it -- we're going to do it attorneys' eyes only,
9 Ms. Hollingsworth. Do you have any objection to that,
10 confidentiality order, attorneys' eyes only?

11 **MS. HOLLINGSWORTH:** I do not. Yes, Your Honor,
12 understood.

13 **JUDGE GERGEL:** Okay. And then what we're going
14 to do is within three days after receipt, you're going to
15 advise the Court whether you seek to depose. And you do
16 these letters, you file them. We just don't need to be
17 burdening, everybody's got a lot of work to do in this
18 case. And then three business days after, the plaintiff's
19 can reply. And then we'll decide. But we won't take
20 anybody's deposition. But --

21 And let me give the plaintiffs a little
22 unsolicited advice. If you've got more than one member,
23 don't pick just one member. If you've got more, do a
24 couple. Because there's always issues where you get
25 surprised, they don't live there, they're not registered,

1 whatever. I'm thinking there's -- create for yourself a
2 little margin of error there, if it's not too burdensome,
3 as a way of -- I'm just trying to get beyond this issue,
4 folks.

5 Can the parties confer about a confidentiality
6 order with attorneys' eyes only? And if there's a
7 problem, you can come back to us?

8 Mr. Bryant, can you do that?

9 **MR. BRYANT:** Yes, we can.

10 **JUDGE GERGEL:** Okay. And I want to encourage
11 y'all, let's -- we're spending a lot of time on issues not
12 related to the really heartland of this case. And if we
13 can move beyond all this, I really want to encourage you
14 to do it.

15 My panel, we don't know much about the facts of
16 this case. We want to know more. And we're spending a
17 lot of time on what I regard as kind of sideshow issues.
18 And I don't want to diminish the importance of some of
19 these issues, but they largely are not important. And the
20 important issues we're really still left in the dark
21 about. And that's where I want us to focus our attention
22 if we can.

23 Okay. I think we've moved -- we've got
24 satisfaction on the issue of standing. And hopefully,
25 within a week or so, we will have that issue behind us.

1 Let me move to the issue of attorney/client waiver of the
2 plaintiffs by this meeting of June 21st, 2021, of the
3 NAACP.

4 Ms. Hollingsworth, is it my understanding -- is
5 my understanding correct that this meeting occurred before
6 the census data was released?

7 **MS. HOLLINGSWORTH:** Your Honor, this is Jennifer
8 Hollingsworth. That document included with our motion was
9 an exemplar of a meeting. What we have from discovery is
10 there was a number of meetings and there were very regular
11 meetings and videotapes of the meeting. It was a
12 coalition led by the plaintiff association but that
13 involved a number of other associations, organizations,
14 and individuals interested in redistricting. And these
15 were very regular meetings with a tone and tenor of
16 assessing, planning, preparing, and then pursuing
17 litigation both as to now --

18 **JUDGE GERGEL:** Who is present at these -- let me
19 just say, I find the argument rather astounding, frankly.
20 And there's no precedent in any of the cases you cited for
21 it. Who are these people at the meetings? And first of
22 all, tell me who the meeting people are.

23 **MS. HOLLINGSWORTH:** The meeting includes
24 organizations both the national level organizations, such
25 as the ACLU and NAACP; as well as South-Carolina-focused

1 organizations like the Progressive Network, League of
2 Women Voters; then individuals such as members of the
3 legislature, other elected officials. Mayor Benjamin, for
4 example, frequented the meetings. So it's a wide variety
5 of both individuals and organizations that --

6 **JUDGE GERGEL:** This sounds like core First
7 Amendment. You know, this is like really core First
8 Amendment. Can you cite me any case in litigation,
9 anything like this where public discussion of issues that
10 are of public interest would constitute attorney/client
11 privilege? Can you cite me any cases?

12 **MS. HOLLINGSWORTH:** Your Honor, again, this is
13 Jennifer Hollingsworth. Our issue here is it has to be
14 one or the other. So the plaintiff's position is that
15 these statements and the discussion of legal strategy was
16 not privileged. But then if that's the case, then either
17 representatives of these national organizations when we
18 sought to obtain discoverable information from these
19 organizations by way of subpoena, then we were told, no,
20 these are their attorneys. You can't subpoena their
21 attorneys for information. So we are in a position where
22 we're not able to access information at all. So, again,
23 for example --

24 **JUDGE GERGEL:** Why is it relevant? Here's the
25 question, what is relevant -- what are you trying to get

1 here other than, frankly, just sort of giving the
2 plaintiff lawyers a hard time, going to war against the
3 lawyers, what is relevant about this? This is what we're
4 all struggling with. Why is this relevant?

5 **MS. HOLLINGSWORTH:** Well, Your Honor, our
6 position would be that this discovery is relevant to being
7 able to ascertain the allegations being made in this
8 complaint. The complaint is challenging these districts
9 that were drawn. And we believe that there is evidence
10 and information even from these meeting minutes suggesting
11 that that wasn't necessarily a belief held by many people
12 that these lines were drawn in a way that was racially
13 discriminatory.

14 **JUDGE GERGEL:** Well, you can take their
15 depositions. The question is the idea that a group of
16 people aligned together in a legal case, these lawyers are
17 all combined together, they're lawyers of record, they're
18 having these public discussions on matters protected by
19 the First Amendment. And I can't even figure what
20 about -- I mean, you've been spending a lot of time,
21 Ms. Hollingsworth, talking about the plaintiff's lawyers
22 and not about the plan. If these lawyers, some of them
23 don't think there is -- I mean, I don't understand. I
24 don't see the point. The point is -- the case law tells
25 us we focus like laser beams on these plans. That's what

1 we focus on. And you're asking us to spend all this time
2 in which you're just basically arguing with the lawyers.

3 And let me say this, judges don't like this.
4 They don't like all this fussing about the lawyers.

5 And I'm straining to figure out what is relevant
6 about what you're trying to get? Are you suggesting if a
7 Thurgood Marshall went to a meeting and spoke to a
8 community meeting that the lawyers of the other side of
9 the case can just take his file and look inside it? Is
10 that really, really what you're arguing?

11 **MS. HOLLINGSWORTH:** And Your Honor, the issue of
12 the specific meeting minutes was not -- that is not a
13 laser focused point of the motion. What we are trying to
14 ascertain and understand is the scope and breadth of this
15 privilege that's being claimed. Because when you review
16 --

17 **JUDGE GERGEL:** You're trying to get -- what is
18 relevant you're trying to get? What are you trying to get
19 at here? We're spending a lot of time nitpicking people.
20 And I'm trying to figure out what's relevant about this to
21 this case? It's not -- the rules aren't -- don't live in
22 abstraction. They've got to be relevant to the case.
23 What is it you're trying to get from these meetings?

24 **MS. HOLLINGSWORTH:** Well, Your Honor, so, for
25 example, a very important area of inquiry in our discovery

1 is understanding more about the maps that were drawn and
2 proposed by the plaintiff. And actually, it was the
3 plaintiff and these other organizations, it was a
4 coalition of multiple organizations, only one of whom is
5 the plaintiff, the SC NAACP.

6 In the discovery responses, plaintiff has
7 refused to provide us any information about the maps that
8 they drew and the maps that they proposed. So in the
9 complaint they describe to the Court that there's ways of
10 drawing the map that aren't impacted by these
11 considerations of race and that they did so and they
12 submitted it. So we're trying to conduct discovery about
13 their maps and understand their maps, much like the way
14 that the maps that we've drawn are relevant to the
15 discussion --

16 **JUDGE GERGEL:** But their maps aren't presented
17 to the Court -- now, if they present a map to the Court --
18 but you're spending all this time trying their maps.
19 Their maps aren't the subject of this litigation. And can
20 you draw maps differently? Sure. We're not trying
21 everybody else's maps, Ms. Hollingsworth. We're trying to
22 try the maps of the House plan, which may be perfectly
23 fine. But you're spending all of your time on other
24 things. And I'm just -- you know, and you want us to
25 chase the rabbit of some earlier drafted plan. I don't

1 understand the relevance of it because they weren't
2 adopted by the House. I mean, exactly what is the point?

3 **MS. HOLLINGSWORTH:** Your Honor, to the extent
4 that there were maps or versions of maps drawn by the
5 plaintiffs, or whoever it was that drew the plaintiff's
6 maps, that are similar to the lines that are now being
7 challenged in this litigation, I would submit that's
8 highly relevant. Because how could it be that when the
9 House drew a line that way that it was the outcome of
10 intentional racial discrimination, but if the plaintiffs,
11 SC NAACP, drew the line that way, it is not so? So --

12 **JUDGE GERGEL:** Well, that that -- you don't
13 have -- if you think those maps are relevant, that's one
14 issue. But to say they have an unqualified waiver of a
15 privilege because they met together, I think you're going
16 to really run head on into the First Amendment here.

17 So the question is, if it's narrower than that,
18 let's talk about that issue. But making a claim that you
19 just walk into their office and take their files because
20 they spoke at a meeting seems very unimpressive. That's
21 an unimpressive argument.

22 Now, if you think some earlier plans are
23 potentially relevant to all of this -- and were they
24 publicly disclosed?

25 **MS. HOLLINGSWORTH:** Yes, Your Honor. What we

1 know --

2 **JUDGE GERGEL:** Well, that's not subject to
3 privilege. I mean, were they published this close at your
4 Ad Hoc Committee or in some other public way beyond just
5 the meeting -- these folks meeting together?

6 **MS. HOLLINGSWORTH:** Yes, Your Honor.
7 Ultimately, there was -- the map was submitted to the Ad
8 Hoc Committee. And then --

9 **JUDGE GERGEL:** So that's not privileged. You've
10 got the maps. Why do we need to get into this head
11 banging about waiving privilege? You've got the map.

12 **MS. HOLLINGSWORTH:** I understand, Your Honor.
13 So what we were asking for in discovery is to be able to
14 ascertain individuals involved in drawing the maps, for
15 example, versions of the map, for example. And in
16 response to all of those questions, we get a broad cloak
17 of privilege protection.

18 **JUDGE GERGEL:** Well, you've got work product.
19 You've got people messing around with plans who are just
20 in their law offices and they're consultants doing it.
21 But if they presented it publicly, fair game. Fair game.
22 Go for it. But to sit there and, you know -- it just
23 seems to me y'all are really chasing rabbits that are
24 getting us away from the focus. We want to focus on the
25 House plan.

1 And I started this conversation by saying we
2 don't have very much information. We're spending a lot of
3 time on things very unrelated to the case at hand. So if
4 they've made it public, you have a right -- if they
5 presented it -- do you have a copy of the map they
6 presented to the Ad Hoc Committee?

7 **MS. HOLLINGSWORTH:** We have the version that was
8 ultimately submitted, yes.

9 **JUDGE GERGEL:** Okay. Well, then, there you go.
10 You've got it. And you want to see -- if you want to
11 question could they have drawn it a different way, you
12 don't need to -- going after somebody's attorney's
13 privilege they met is just the wrong way of going after
14 this. You know, it just doesn't make any sense to me.
15 So, you know, if it's publicly disclosed beyond meeting --
16 if you say a bunch of groups are working in coalition with
17 each other, they are all counsel of record here and
18 everything and they're meeting, we are not going to
19 have -- you're not going to say, okay, now the privilege
20 is waived. If there's something they publicly presented,
21 you've got the map. You've got it. What else do you need
22 from -- you're trying to get from having them waive their
23 privilege?

24 **MS. HOLLINGSWORTH:** And Your Honor, to be --
25 we're not trying to do some broad blanket waiver. We've

1 been --

2 **JUDGE GERGEL:** Well, that's what you presented,
3 Ms. Hollingsworth. You presented a broad blanket waiver.
4 And I've been at the Bar 40 some odd years. I've never
5 seen anything like this. I've never seen such an
6 argument.

7 **MS. HOLLINGSWORTH:** And Your Honor, we've
8 reviewed the discovery as it's been coming in and these
9 videos and meeting minutes. We believe when there are
10 public presentations about the ways in which the strategy
11 can be pursued and which districts are being challenged
12 and why, and then back the underlying materials being
13 withheld now on the basis of privilege, we believe that
14 that is inconsistent with how you protect confidential
15 information.

16 **JUDGE GERGEL:** You presented to us the minutes.
17 That's the forwarding your thing right now. And you're
18 going to run flat into the First Amendment here. And I
19 think it's a dead end for you.

20 I want you to be able to robustly defend your
21 plan. But chasing -- this is just chasing rabbits. It
22 really is. And so, you know, what you've presented to us,
23 I just -- I don't see any legal basis to waive privilege.
24 And it would be unprecedented American law to do it in
25 litigation such as this.

1 Let me move on to the -- there were a series of
2 objections that defendants had. The plaintiffs were
3 requested to provide information. And they -- the answer
4 was, We're going to give you our expert reports.

5 I want to know from the plaintiffs, have you
6 actually given them the expert reports?

7 **MR. HINDLEY:** Yes, the House Defendants have the
8 plaintiff's expert reports at this point.

9 **JUDGE GERGEL:** Okay. And on some of these,
10 like, they're asking on race predominance over traditional
11 districting principles, you said expert report. Are you
12 intending to offer any evidence, Mr. Hindley, beyond the
13 expert report?

14 **MR. HINDLEY:** Yes, Your Honor. We hope that in
15 the case not only in addition to the expert reports, we'll
16 also provide hopefully communications that we will receive
17 from the House Defendants as part of the discovery
18 process.

19 **JUDGE GERGEL:** Well, don't you need to answer
20 the discovery to say that? I mean, the defendants need --
21 are entitled to notice. Simply saying I'm going to give
22 you my expert report doesn't sound comprehensive to me if
23 you're planning to use other evidence.

24 **MR. HINDLEY:** Your Honor, this is John Hindley
25 for plaintiffs. I would ask -- during our meet and

1 confers, this wasn't an interrogatory that was discussed
2 during our meet and confers. We're happy to meet and
3 confer with --

4 **JUDGE GERGEL:** Well, no. I mean, I'm just
5 saying these are the requests to produce. They said give
6 us anything you've got on a variety of issues, 19 through
7 21, and 42, and y'all answered, Expert report. Now, there
8 are cases where the only evidence in the case is really
9 going to come from an expert. And I think giving the
10 expert report is just fine. But if you're providing -- if
11 you're intending to use other evidence, you've got to
12 answer the request to produce with other documents that
13 you have that you intend to offer. I mean, I think the
14 defendants are going to have a fair objection if you start
15 showing up with stuff and they'll say, Where the Bates
16 Stamp number? I mean, y'all have got to produce it. Do
17 you hear what I'm saying, Mr. Hindley?

18 **MR. HINDLEY:** Yes, Your Honor. This is John
19 Hindley for plaintiffs. I think your point kind of hits
20 the nail on the coffin on our motion. We have not
21 received documents or communications that would be
22 responsive to the interrogatories and in the end would
23 be --

24 **JUDGE GERGEL:** No, no, no. Don't give what
25 about. I'm doing about theirs right now. Don't give me

1 about what they haven't done for you. They gave me that
2 same response.

3 I want to talk about your -- if you're -- I
4 think the plaintiffs need to go back. And where you said
5 I'm giving you the expert report and that's basically all
6 you're giving, you're going to run into this problem at
7 trial of them objecting that they haven't received the
8 evidence and they have outstanding discovery requesting
9 it. Do you hear what I'm saying? You've got to --

10 **MR. HINDLEY:** Yes, Your Honor.

11 **JUDGE GERGEL:** They're entitled to having a full
12 discovery. So I want y'all to go back over these and
13 supplement your responses on these things like race
14 predominance and racial polarized voting. If you've got
15 other evidence, other documents, this is a request to
16 produce, you need to supplement. And you need to do it
17 promptly.

18 I think there's a little coyness to some of
19 these plaintiff responses that aren't -- they are going to
20 bite you in the rear end at some point if you don't give
21 them the information.

22 **MR. HINDLEY:** Yes, Your Honor. We will -- we'll
23 review our responses and we'll present those to House
24 Defendants.

25 **JUDGE GERGEL:** Okay. There are also in requests

1 to produce 25 and 33, you said, Well, we -- the NAACP
2 already gave this to the Ad Hoc Committee on
3 Redistricting. I think that's fine. But if I were trying
4 your case, I would want to have a Bates Stamp on anything
5 I'm intending to offer. And just because you gave it to
6 that committee, you don't want to dispute later on whether
7 you actually gave it or not. I think you need to
8 supplement and produce the documents over again. If they
9 get it twice, so be it. But you've got a duty to make
10 sure they got the documents. Okay?

11 **MR. HINDLEY:** Yes, Your Honor.

12 **JUDGE GERGEL:** Okay.

13 Let me turn to these requests to admit. Folks,
14 a request to admit has a very limited purpose. It is to
15 identify issues in which there's not really dispute and
16 which narrow the -- which narrow the issues in the case.
17 The requests to admit here are nothing -- are issues --
18 first of all, there are not enough facts in them. So
19 we're asking the Court to evaluate whether -- whether
20 the -- a particular district race is a predominance. And
21 we're supposed to deal with multiple factors. And we
22 weigh them to determine whether race is or not a
23 predominant issue. It's a multi-factorial issue.

24 Many of these requests to admit take one of
25 those factors and say is it possible that if -- you know,

1 is it possible that you could have a non-compact district
2 and still not have race? Well, the answer is it depends.
3 It's not subject to a request to admit.

4 And I would say almost every request to admit
5 that's objected to is infected with that problem. It
6 doesn't narrow the question. It's a little bit of a
7 gotcha. It's not enough information. And in my view,
8 it's just a misuse of the requests to admit.

9 There's one case that talks about, you know, we
10 don't want to be unduly burdensome. We don't want to go
11 to the heartland of cases, the information that's in
12 dispute. That's all these requests to admit are. And I
13 don't think it's a proper use of the requests to admit.

14 The key issue, does it help narrow the issues?
15 I can't see one of them that does. And so, you know, I
16 think we need to move beyond that. You've got other
17 methods of discovery that are more robust, more precise.
18 You can cross-examine these experts. Just because it is
19 not compact, does it tell you -- you can ask all those
20 questions. They are more appropriate for the examination
21 of experts than their requests to admit.

22 I'm going to tell you, you're kind of wearing us
23 out on all this. It's not effective. And, you know, I
24 think our view sort of is the requests to admit as
25 answered are fine. There are better ways to get to this

1 information. And the questions are just -- can't be
2 answered with a yes or no. Too many of them have just
3 that very problem.

4 The plaintiff's privilege log. I have a
5 communication from plaintiff's counsel they wanted for us
6 to examine it in camera. Am I right about that?

7 **MR. HINDLEY:** This is John Hindley for
8 plaintiff. That is correct.

9 **JUDGE GERGEL:** Okay.

10 Let me go back, Ms. Hollingsworth. Exactly what
11 are you trying to get from these plaintiff's emails that
12 you're objecting to? What do you think is in there that's
13 relevant to the case?

14 **MS. HOLLINGSWORTH:** Well, Your Honor, this is
15 Jennifer Hollingsworth. I'm not sure, Your Honor, because
16 I don't know what it is that was being discussed or
17 provided. And when you look at the privilege log, it's
18 just exceedingly unclear how it's even privileged when it
19 includes people that aren't parties, it's documents from
20 many years ago.

21 **JUDGE GERGEL:** Again, why is all this relevant?
22 I'm trying -- you know, y'all just like -- it's like
23 disembodied from the case. Y'all are making all these
24 objections. If it's relevant, fine. But just because,
25 you know, you don't know what it is and you don't really

1 know why you want it doesn't -- I'm just struggling. What
2 do you think is going to be in there that's relevant to
3 the case?

4 **MS. HOLLINGSWORTH:** Your Honor, with respect,
5 the privilege log is created by the plaintiffs when
6 reviewing discovery. They've compiled discovery that
7 presumably is responsive to what we've asked for. And
8 then they put on the log because they believe it's
9 privileged. I would submit the fact that it's even on the
10 log is the indication that it's necessary --

11 **JUDGE GERGEL:** I think it's going to be very
12 obvious for all of these logs, we can't figure it out in
13 the abstraction. So I'm just going to direct the
14 plaintiffs to produce their -- everything on their
15 privilege log in camera. We'll do the same for the
16 defendants. We can't figure it out. There's just no way.
17 Y'all's descriptions are completely inadequate. We can't
18 figure it out.

19 And I do -- I'm just trying to figure out what's
20 even relevant that the plaintiff's would know that's
21 particularly relevant to this case? But whatever it is,
22 we'll look at it. And if it's not privileged, we're going
23 to require it to be produced. And if it's privileged,
24 we're going to protect it.

25 Let me now turn to the plaintiff's motion to

1 compel. And there's much in doubt, Mr. Hindley, about --
2 first, about what you're seeking. Is there a class or
3 group or pool of witnesses who you want their emails and
4 private communications? Do we have an agreement who --
5 what that list is? Who those people are?

6 **MR. HINDLEY:** Yes, Your Honor. This is John
7 Hindley for plaintiffs. That would include the House
8 Defendants, the members and members of the Ad Hoc
9 Redistricting Committee.

10 **JUDGE GERGEL:** Okay. That's it?

11 **MR. HINDLEY:** And key staffers who were involved
12 in drafting the maps as well.

13 **JUDGE GERGEL:** Okay. And who are they? I can
14 identify the ad hoc. I know who the House Defendants are.
15 Who are the key staffers?

16 **MR. HINDLEY:** That would include Ms. Emma Dean,
17 Mr. Patrick Dennis. That would include Mr. Thomas Hauger.

18 **JUDGE GERGEL:** Anybody else?

19 **MR. HINDLEY:** Your Honor, I do have a couple
20 additional names if that's okay with you.

21 **JUDGE GERGEL:** Well, I just want them identified
22 because precision here is kind of important. But y'all --

23 **MR. HINDLEY:** Of course, Your Honor.

24 **JUDGE GERGEL:** There's somebody else on your
25 team on the phone. There's 20 some odd people. Y'all

1 come up with that. And then there is a question, first of
2 all, about the official email accounts of individual
3 legislators. Have y'all worked that out, the members of
4 the Ad Hoc Committee?

5 **MR. HINDLEY:** Yes, sir. This is John Hindley
6 from plaintiffs. I believe we have. House Defendants
7 informed us that they received consent from the members of
8 the Ad Hoc Committee that there would be -- that counsel
9 asserts their legislative emails for relevant documents
10 communication.

11 **JUDGE GERGEL:** Okay. And then how about --
12 you've been wanting the private emails; that is, where
13 legislators were communicating on their private
14 communication devices, emails, texts, instant messaging,
15 whatever. Have y'all worked out anything on that?

16 **MR. HINDLEY:** No, Your Honor, we have not.

17 **JUDGE GERGEL:** Okay.

18 Ms. Hollingsworth, to the extent there is
19 communications on private emails, why would the -- from
20 these legislators or their staffs, why would that not be
21 subject to discovery?

22 **MS. HOLLINGSWORTH:** Well, thank you, Your Honor.
23 And this is Jennifer Hollingsworth. Understanding that
24 before the Court is a motion to enforce the Court's order,
25 not a motion to compel. I do want to make that point.

1 **JUDGE GERGEL:** Let's not get too efficient about
2 this. The order would cover that. So let's just get
3 on -- you know, I am -- having been a former private
4 practitioner, I would not want anyone going through my law
5 firm's emails. I'm very sympathetic to you on that. The
6 question is isn't there a less intrusive way to identify
7 potentially relevant documents? And if so, why wouldn't
8 that be required to be produced?

9 **MS. HOLLINGSWORTH:** Understood, Your Honor. And
10 I think I would certainly say that that's not at all been
11 even a possibility in the discussions with plaintiffs. It
12 has been -- we've made it very clear, as the Court knows,
13 that requiring practicing lawyers --

14 **JUDGE GERGEL:** That's off the table. Don't even
15 waste your breath on that. You sold me on that one.
16 Okay? You're right. But why couldn't they do this. And
17 Judge Seymour had suggested this to the panel. It's that
18 you would go to the identified group of people we were
19 talking about. You would have them sign a -- they would
20 search their private communication devices, what they sent
21 and received. And they would sign a certified statement
22 under oath under penalty of perjury that it had all the
23 reapportionment related communications. They would do
24 their own search. We would rely on their certification to
25 us. Obviously, if later documents came forward that they

1 hadn't disclosed, we'd have to deal with that. But
2 wouldn't that be a less intrusive way to have those
3 relevant documents produced?

4 **MS. HOLLINGSWORTH:** Yes, Your Honor. I would
5 want to ask the Court, though, in terms of this scope of
6 the individuals. I mean, certainly understand we have
7 three named defendants that the staffers, we have searched
8 their work emails and these are employees, Ms. Dean,
9 Mr. Dennis and Mr. Hauger, and their emails have all been
10 produced. So --

11 **JUDGE GERGEL:** Including their -- I don't know,
12 were they doing any private communication? I mean, I
13 haven't heard anything about that.

14 **MS. HOLLINGSWORTH:** No, there's been nothing.
15 There's no indication -- there's nothing with personal
16 emails. What we're dealing with are the legislators who
17 have their business emails that at times they've used to
18 receive information, at most just scheduling and
19 procedural issues. But --

20 **JUDGE GERGEL:** I'm -- that's why I started this.
21 I wanted to define who we're talking about. We're talking
22 about the three named House party defendants and then the
23 Ad Hoc Committee. That's a definable group. And it seems
24 to me you could go to them and say, listen, we've got to
25 produce relevant documents relating to reapportionment

1 that you may have either received or transmitted on any of
2 your private communication devices. And then you're going
3 to give that to us, the defense counsel. And you're going
4 to sign a certification under oath for the Court. I'll be
5 glad to attach it to an order that has the caption of the
6 case and I hereby certify under penalty of perjury this is
7 all I have. And it seems to me that's a much less
8 intrusive, less troublesome way of producing the relevant
9 information without the party -- the third parties
10 rummaging through people's law firm accounts and so forth.

11 **MS. HOLLINGSWORTH:** Yes, Your Honor. I would
12 ask -- well, a couple of things in response. One, is the
13 relevance as it's defined in the Court's order, which, of
14 course, is talking to, you know, evidence of intent and
15 evidence related to --

16 **JUDGE GERGEL:** Well, listen, if it's related to
17 reapportionment, y'all have been producing communications
18 relating to reapportionment, I presume. Just produce the
19 stuff. I don't want to get into this nuance about, well,
20 does it reflect on intent? We'll deal with that later.
21 What you don't think reflects on intent the plaintiff may
22 have a different view, Ms. Hollingsworth.

23 **MS. HOLLINGSWORTH:** Absolutely.

24 **JUDGE GERGEL:** So I don't want to get unduly --
25 I think it's just -- I haven't -- I'm not looking at their

1 interrogatories right now -- or requests to produce. Go
2 look at them. If it would include -- those requests
3 include information relevant to the reapportionment,
4 you've got to produce it, not start saying only as it
5 relates to intent.

6 **MS. HOLLINGSWORTH:** Understood.

7 **JUDGE GERGEL:** If you hear what I'm saying. I'm
8 not looking at the -- I'm not trying to rewrite their
9 discovery. Whatever their discovery says, you've got it.
10 You're telling me you've produced it from the legislative
11 official accounts. Just go do the same thing for their
12 private accounts. Whatever the --

13 **MS. HOLLINGSWORTH:** Yes, Your Honor. I do
14 have -- we did make it clear to the plaintiffs, although
15 we accommodated their earlier requests with the Ad Hoc
16 Committee members, those individuals are not parties. And
17 we certainly can go and again ask their consent and ask
18 them to do this but --

19 **JUDGE GERGEL:** I will -- if they don't want to
20 comply, we're not going to -- they're going to get
21 subpoenas. This is potentially relevant information.
22 Let's get it over with so we can spend the time letting
23 y'all defend your plan, Ms. Hollingsworth. All this sort
24 of obstruction, you know, it's not getting us anywhere.
25 We need to get on with whatever information they've got,

1 let's get it out there. And then let's, you know, give
2 you guys a chance to defend your plan with the record.

3 **MS. HOLLINGSWORTH:** Yes, Your Honor. Again, I
4 hear Your Honor. I don't think we've been obstructive. I
5 think we've worked exceedingly hard and produced
6 everything that --

7 **JUDGE GERGEL:** Y'all's response to our order was
8 excellent. I mean, I've got to say, y'all really jumped
9 at it. And we appreciate that.

10 But we've got to get on -- we've got to get
11 beyond this. We've got to get the potential things in the
12 private accounts. And then, you know, we'll -- and we'll
13 have a fuller record. And if there's nothing to it, so be
14 it. If there's something in there, fine. You know, we
15 don't have any idea. But, you know, I'm not looking at
16 their discovery and their interrogatories and requests to
17 produce. Be guided by that and produce it. If they've
18 asked for it, unless there's some reason to object, come
19 back to us. But I think you need to go ahead and produce
20 the information. You're telling me there's no -- race was
21 not a predominant thing. That's your answer. You believe
22 that. This evidence shouldn't hurt you.

23 **MS. HOLLINGSWORTH:** Yes, Your Honor. I will say
24 to the -- to your point about being guided by their
25 discovery, I think, again, an issue that's just simply

1 never been addressed by plaintiffs is we did object on the
2 basis of breadth and scope.

3 JUDGE GERGEL: Well, we don't have time for
4 this, frankly. Just produce it. This is major
5 litigation. Breadth and scope is not going to be
6 particularly compelling for either side right now. Y'all
7 need to produce it. The problem is most of the relevant
8 knowledge your clients have, not the plaintiffs. They
9 don't know much. They're trying to discover it. That's
10 what discovery is. The defendants have most of the
11 relevant knowledge. And objecting to scope and breadth on
12 a case like this is not going to be persuasive. Just
13 produce it. Let's get it over with. Let's try the case
14 in May with a full record.

15 MS. HOLLINGSWORTH: Yes, Your Honor.

16 JUDGE GERGEL: Okay. Now, let's turn to the
17 House --

18 MR. HINDLEY: Your Honor, can I just --

19 JUDGE GERGEL: Yes.

20 MR. HINDLEY: Apologies. I just want to make
21 one point before we move on --

22 JUDGE GERGEL: Can you identify yourself for the
23 record, please?

24 MR. HINDLEY: Oh, apologies. This is John
25 Hindley on behalf of the plaintiff. In response to

1 plaintiff's interrogatories, House Defendants identify a
2 number of relevant individuals. We would hope the House
3 Defendants will search the personal emails of those
4 individuals that they have identified as relevant to the
5 redistricting process.

6 **JUDGE GERGEL:** Well, who are -- that's what I
7 started off, Mr. Hindley. I knew this was a little bit of
8 a cat and mouse thing here. Who are these people? You've
9 given me the three named defendants, the Ad Hoc Committee.
10 Is there anybody else?

11 **MR. HINDLEY:** Well, in the broad response that
12 House Defendants that they also include Mr. Hauger,
13 Ms. Williamston, Mr. Degupe (phonetic) --

14 **JUDGE GERGEL:** Who are these people? We don't
15 know who these people are.

16 **MR. HINDLEY:** These are staffers who work and
17 who were involved in drafting the House maps. House
18 Defendants identified them as relevant individuals. So I
19 assume as part of the -- that they know how involved they
20 were in the redistricting process.

21 **JUDGE GERGEL:** Well, I mean, we're now talking
22 about getting their emails. Are you saying these people's
23 emails have not been produced? Have you asked for them?
24 I'm just confused. I was focused in on the legislators.
25 These other people, the map makers, they don't have -- is

1 there a claim they have any kind of privilege? I thought
2 we ordered they produce all the mapping information.

3 **MR. HINDLEY:** They produced the maps and files
4 as of Friday. But we don't have the communications and
5 their discussions on -- involving the redistricting
6 process. And I just --

7 **JUDGE GERGEL:** What does that mean? I mean,
8 they have not produced the communications between these
9 mappers and third parties and the legislators? Is that
10 what you're saying?

11 **MR. HINDLEY:** Yes, Your Honor. Because they
12 produced a lot of communications to and from legislators
13 but there's a lot of -- there's definitely communications
14 among staffers that we still do not have related to
15 redistricting. And I would ask --

16 **JUDGE GERGEL:** Give me an example of what you
17 think is missing.

18 **MR. HINDLEY:** The Ms. Sarah Grace Williamson
19 they have identified as someone who was involved in the
20 redistricting process. I have not seen any document
21 communication coming from her.

22 **JUDGE GERGEL:** Is she a lawyer? Mr. Hindley, is
23 she a lawyer?

24 **MR. HINDLEY:** As far as they were employees in
25 the map room during the redistricting process.

1 **JUDGE GERGEL:** Okay. And have you noticed their
2 depositions?

3 **MR. HINDLEY:** No, we have not, Your Honor.

4 **JUDGE GERGEL:** Okay. I mean, it seems to me
5 that to the extent you want their emails and they haven't
6 produced them, that seems to be pretty core material. And
7 you could ask an -- and if there's a problem you could
8 move to compel if you've asked for that material. If you
9 wanted you can take their deposition. We've made it clear
10 you could depose these folks. I know there was some
11 dispute about whether y'all had been given enough
12 information about when the maps were generated and who
13 produced them. Have you gotten that -- have y'all
14 clarified that?

15 **MR. HINDLEY:** No, Your Honor. Just today we
16 still don't know who the map maker is. And the
17 communications --

18 **JUDGE GERGEL:** Well, the defendants say they've
19 given you the information.

20 Ms. Hollingsworth, what's the story on that?

21 **MS. HOLLINGSWORTH:** Your Honor, Jennifer
22 Hollingsworth. Quite frankly, it's just categorically
23 incorrect. But all of the information from the map room
24 was provided to plaintiffs. In that reply filing I think
25 last week was the first time we got any word that the data

1 that we produced pursuant to the Court's order on
2 February 15th that the ESI protocols that the plaintiffs
3 had in the Joint 26(f) Report had an impact on how that
4 data came across and they were unable to load it into the
5 Maptitude software.

6 **JUDGE GERGEL:** Well, let me say, I get this
7 problem in my criminal cases all the time. You know, the
8 Government will give evidence and the defense lawyers have
9 trouble downloading it and getting it. And what the
10 lawyers do is they call each other and they help each
11 other to make sure -- I figured that was the explanation,
12 Ms. Hollingsworth. When you said we've given it to them,
13 I believed you. But they don't know it. So rather than
14 do this roundabout with the panel, why don't y'all just
15 talk to each other and explain to them where it is.
16 Wouldn't that be the easier way to do it?

17 **MS. HOLLINGSWORTH:** Your Honor, we gave it -- on
18 Friday we hand delivered a thumb drive and said didn't
19 know you had an issue. Here you go. We've done
20 everything that we can. As soon as we found out there was
21 an issue, we gave it to them and wrapped it up, Your
22 Honor. So it's been done. If there are still issues,
23 we're happy to help these folks --

24 **JUDGE GERGEL:** Ms. Hollingsworth, I don't think
25 you're trying to hide the ball. I think -- Mr. Hindley,

1 you're hearing Ms. Hollingsworth. Y'all call her up if
2 you've still got confusion and get it straight. You know,
3 I just don't think this is something you need to be
4 bringing in front of the panel. If you can't work it out,
5 let us know. We will make sure. But when
6 Ms. Hollingsworth said she gave it to y'all, it doesn't
7 mean y'all know she did. It means you may not understand
8 how you got it. Take a look at it. And if it's not
9 worked out and she can't explain it to you, then come back
10 us to. But we're trying to get beyond all this.

11 **MR. HINDLEY:** Thank you, Your Honor. This is
12 John Hindley from plaintiff. We are in receipt of the
13 thumb drive and we've uploaded it on our end and had our
14 analysts look at it. They're going to look at them. But
15 at the same time our analysts on our side said that
16 there's no way of identifying who made these maps and when
17 they were created. So we'd appreciate that information.

18 (Indiscernible crosstalk.)

19 **JUDGE GERGEL:** Here's what I'll say. I want
20 y'all to confer about it. You may even get your tech
21 people and their tech people to talk to each other. That
22 might be an amazing thing to do so they could explain it.
23 And it may be something that y'all -- I mean, listen, I'm
24 usually the victim of not knowing what I have in
25 technology. So it may be there and y'all don't appreciate

1 it. But work through this, folks. They're telling me
2 they're not hiding it. You're entitled to the
3 information. Let's figure a way to get it. Okay?

4 Let me turn to the House Defendants' privilege
5 log. And I think I was just saying earlier, I don't know
6 any way to sort through -- they are fairly nuanced issues
7 about when lawyer staff members of legislators the matter
8 is subject to the attorney/client privilege and what is
9 not. The information we have, we can't sort it out. And
10 we're just going to have y'all, both sides just give us
11 your materials on your privilege log. It's not something
12 we really want to do but we'll go through it. And we'll
13 -- the things that don't appear privileged, we'll order
14 you to produce it. And the things that appear privileged,
15 we will -- you know, we will protect it.

16 How long will it take, first of all, from the
17 plaintiffs, to get together your material on your
18 privilege log and submit it to the Court?

19 **MR. HINDLEY:** Your Honor, I think we will be
20 able to submit that within 24 hours.

21 **JUDGE GERGEL:** Okay.

22 How about the defendants? How long on the
23 privilege log to submit it to the Court?

24 **MS. HOLLINGSWORTH:** Your Honor, we would -- I
25 believe 24 hours should be fine.

1 **JUDGE GERGEL:** Okay. I want y'all to look
2 again, both of you, at what you claim to be privileged.
3 And if you on reflection don't think it is, go ahead and
4 produce it. If it is privileged, submit it to us. Okay?

5 **MS. HOLLINGSWORTH:** Yes, Your Honor. This is
6 Jennifer Hollingsworth. I also think that there's --
7 there will be a range of documents that I would just
8 submit that there may be also a range of documents that we
9 may just agree with each other if we have the opportunity
10 to talk and would agree to things that may fall clearly
11 within the privilege and not --

12 **JUDGE GERGEL:** Yeah, anyway, harmless, correct?
13 Without waiving the privilege. Y'all want 48 hours then
14 so y'all can talk tomorrow about it?

15 **MS. HOLLINGSWORTH:** Yes, Your Honor, if that's
16 okay with the Court.

17 **JUDGE GERGEL:** That would be fine. I'm really
18 trying to get y'all beyond all this so we can get on with
19 the merits.

20 I got this email yesterday about search terms.
21 And the -- Ms. Hollingsworth, what's your complaint about
22 the proposed search terms they want added?

23 **MS. HOLLINGSWORTH:** Your Honor, it's excessive
24 and duplicative. It's words like a county name and the
25 name of legislators. We have -- the Court has in the

1 footnotes of the briefing, we've implemented initially 18
2 terms. We took what the plaintiffs asked and we created a
3 list that captures all of those concepts but doesn't just
4 bring in a bunch of needless, irrelevant material.

5 A sitting member of the House, their name, they
6 are going to be on any email that they're on. The name
7 Berkeley or just a county name, it doesn't connect it in
8 any way. When we've done word -- and word terms, as
9 you'll see, Your Honor, have truly captured just the
10 widest net that we could possibly have captured. Our
11 terms, Your Honor, are exceedingly broad and capture
12 everything related to the process, not merely intent but
13 everything related to the process. I would just submit --

14 **JUDGE GERGEL:** Let me ask you this. Is there a
15 way to use terms, like, you could put Orangeburg and
16 redistricting and have to have both of them in there or
17 something like that so that we wouldn't get everything
18 from Orangeburg County Water and Sewer District and so
19 forth?

20 **MS. HOLLINGSWORTH:** Right.

21 **JUDGE GERGEL:** Is there a way to narrow it that
22 way?

23 **MS. HOLLINGSWORTH:** So, Your Honor, what I would
24 submit is we've already done that because we simply
25 searched redistricting. So we've already done that by

1 using -- without just trying to have a single county
2 named, we've done the part where we have redistricting and
3 district. So the terms that we've already implemented and
4 reviewed capture everything that you would conceivably get
5 already.

6 **JUDGE GERGEL:** Did you say to me that you used
7 the terms that the plaintiffs originally proposed to you?

8 **MS. HOLLINGSWORTH:** No, Your Honor. What I'm
9 saying is the few that are left, which are only a name of
10 a county and I believe the names of a few legislators in
11 isolation, as the Court has pointed out, if we did
12 something like Orangeburg and near the word district,
13 we've already done the search just looking for district.
14 So Orangeburg is already within the parameters of what we
15 would have reviewed and produced for discovery.

16 **JUDGE GERGEL:** Before you did your word
17 searches, did you consult with the plaintiffs about the
18 scope of the words you were going to use?

19 **MS. HOLLINGSWORTH:** Not at the initial one, Your
20 Honor, neither of us did. Our discovery requests to each
21 other and our Joint 26(f) Report, we didn't have any
22 preset terms. But then when we met in the consultations
23 after, I think the plaintiff had nine terms for the
24 associational plaintiffs. There were no search terms for
25 Scott. We, the House Defendants, implemented initially 18

1 search term's and concepts that we did. And then when the
2 plaintiffs proposed to us a list of 41 additional terms,
3 we took that list and created what we believe is
4 additional search terms of concepts that captured --

5 **JUDGE GERGEL:** You adopted the 41 recommended
6 by -- requested by the plaintiffs?

7 **MS. HOLLINGSWORTH:** No, Your Honor, it wasn't
8 all 41. The only ones we didn't adopt were the ones that
9 were emailed to the Court, which was just a first name of
10 a county and the name of a few legislators. We did all of
11 the other terms including these national partisan groups.
12 We did that search as well.

13 **JUDGE GERGEL:** Mr. Hindley, you know, we have
14 this search term issue come up in a lot of our very
15 complex litigation. And there is an art to this. It's as
16 equally bad to under-request as to over-request. You know
17 what I'm saying?

18 **MR. HINDLEY:** Yes, Your Honor.

19 **JUDGE GERGEL:** You know, you get eight million
20 documents or you get four documents, right? And there's
21 an art to it. I've never been asked to get into the
22 precise search terms, I must confess. But it does strike
23 me that if you have county names and nothing else, you
24 really do invite a massive amount of documents irrelevant
25 to the search.

1 **MR. HINDLEY:** And that's why --

2 (Indiscernible crosstalk.)

3 **JUDGE GERGEL:** I've been fuzzing about
4 relevance. You're going to get everything from Anderson
5 County? Good God. I mean, it would be massive.

6 **MR. HINDLEY:** This is John Hindley on behalf of
7 plaintiffs. And that's why we asked to confer to narrow
8 or have a different variation of these search terms.
9 Because these county names are counties targeted -- as we
10 alleged are targeted by districts. And these are names of
11 representatives who were also targeted to the
12 redistricting process.

13 **JUDGE GERGEL:** I recognize enough of them to
14 figure out what you were up to. I'm just saying if you
15 say Richland County, that's one of the state's largest
16 counties. It has lots of things related -- unrelated to
17 districting. Most of the material you would pick up on
18 Richland would be nothing to do with redistricting.
19 They've already got districting or redistricting
20 questioned. Why adding the name of Richland does it not
21 duplicate what they've already asked for?

22 **MR. HINDLEY:** Well, probably because we don't
23 know what we don't know. And as part of the meet and
24 confer process with defense, we asked them for a hit
25 report. And just for Your Honor's knowledge, a hit report

1 identifies how many documents a particular search term
2 identifies. And they have not shared that hit report.
3 And that would have been a good basis for discussion on
4 narrowing these search terms. But instead they just
5 refused to acknowledge those --

6 (Indiscernible crosstalk.)

7 **JUDGE GERGEL:** Ms. Hollingsworth, I think you're
8 going to get a massive response. Is there a way to do a
9 hit report and give a report back to the plaintiffs on
10 those terms?

11 **MS. HOLLINGSWORTH:** If that's what the Court
12 would like us to do, certainly we can --

13 **JUDGE GERGEL:** I think it's going to produce
14 what you think it's going to produce. Okay? Which is
15 going to be massive irrelevant documents. But I think you
16 should share that with them. I really don't like getting
17 as granular as this in telling y'all how to do the search
18 terms. From your -- the search terms y'all have
19 exercised, what kind of document response did you get?

20 **MS. HOLLINGSWORTH:** Your Honor, we've
21 produced -- I mean, we've produced thousands of emails and
22 communications. I have -- let me put my hands on a list
23 where we've broken it down by productions. It's been
24 thousands. And in fact the most recent production, which
25 was the production that included the additional search

1 terms and the additional custodians, I believe was another
2 973 documents and emails. So we've done -- we've produced
3 all of the emails from the redistricting portal itself.
4 Then the emails from all of the custodians that we
5 initially identified. And then this most recent
6 production were the items that came off our privilege log,
7 the additional custodians and additional search terms. So
8 all of those search terms we've identified have been
9 produced in discovery. And it's thousands of emails, Your
10 Honor.

11 **JUDGE GERGEL:** Well, I think you do the hit
12 report. And if the plaintiffs still want it, they can
13 make another motion. I'm not much impressed -- I think
14 this is one of those low-return-high-effort things. And
15 again, I've tried to get the parties to focus on the
16 merits here. And, you know, I'm not persuaded having
17 those county names will not give you such a massive
18 response, it'll be worthless. But if you would do the hit
19 report, Ms. Hollingsworth? And if the plaintiffs still
20 want it, they can come back to us, okay?

21 **MS. HOLLINGSWORTH:** Yes, Your Honor. I think
22 the only thing I'm just not sure of, Your Honor, a hit
23 report that shows X number of times the word Orangeburg
24 appeared in our production and X number of times it
25 appeared in documents that were non-responsive, just the

1 word Orangeburg -- it's the word Orangeburg isn't
2 indicative of anything related to the redistricting
3 process. So I think --

4 **JUDGE GERGEL:** What they think is you've got
5 documents that you think refer to the Orangeburg
6 districts, which I recall to be one of the cluster of
7 districts, and they think it didn't get picked up
8 elsewhere. I'm kind of like you. I think if you used
9 these other terms most probably it's not correct and
10 you're going to get everything about the Water and Sewer
11 District in Orangeburg and school board and all that. But
12 I think if you'll just do the hit report, I think you'll
13 see that they may be -- the plaintiffs may be on a fool's
14 error in chasing this stuff. So if it's not that
15 burdensome to do a hit report, just do it.

16 **MS. HOLLINGSWORTH:** Yes, Your Honor.

17 **JUDGE GERGEL:** And I think the point will be
18 made.

19 **MS. HOLLINGSWORTH:** Yes, Your Honor.

20 **JUDGE GERGEL:** There was also a confusion, the
21 plaintiffs were complaining they had not gotten documents
22 sent or received from third parties. And the defendants
23 said they had produced it. Is that issue still unsettled?

24 **MR. HINDLEY:** Yes, Your Honor, because as part
25 of our review of the production, we have not encountered

1 any communications with third parties. And that's why we
2 are asking for personal emails and text messages of
3 legislators and key staffers because there's a possibility
4 that they're communicating with third parties through that
5 avenue and not through the official state house email.

6 **JUDGE GERGEL:** Okay. Ms. Hollingsworth, you say
7 they produced third parties. Are some of these documents
8 from third parties?

9 **MS. HOLLINGSWORTH:** Absolutely, Your Honor. And
10 I think part of the issue is I have a feeling plaintiffs
11 mean something very specific when they say third parties.
12 Because, of course, by virtue of producing the
13 redistricting portal, they have got all of the documents
14 and communications that came from any number of
15 constituents and organizations and persons interested in
16 the process. And all of those terms were applied to our
17 custodian accounts as well. And then even in this most
18 recent round of searches that we did for the plaintiffs,
19 we included these partisan organizations that they asked
20 for. We did the searches. There weren't documents, Your
21 Honor. So I just don't know what it is that they claim
22 they don't have because --

23 **JUDGE GERGEL:** Yeah. I mean, it's always this
24 issue is one side thinks something exists and the other
25 side says it doesn't exist. And we, as judges, sit there

1 and just say we don't have any way to figure out what --
2 you know, who is correct in that. You can't require
3 somebody to produce something that, you know, they say
4 they don't have.

5 All I can say is if there have been such
6 communications and you're going to go to the private
7 emails and we're going to get that information, and if
8 there's, you know, from that leads you to other
9 information, the plaintiffs can pursue it.

10 Let me go back if I can to this pool of, you
11 know, we're talking about the private emails. I need some
12 help. I don't want to debate later about who is in the
13 this pool, who is going to be required to produce their
14 private emails. Mr. Hindley, who do you want beyond the
15 three House named House Defendants and the Ad Hoc
16 Committee? Anybody else for their private emails?

17 **MR. HINDLEY:** Yes. So understood we added to
18 our first interrogatories, which include Mr. Thomas
19 Hauger, Ms. Sarah Grace Williamson, Mr. Joey Deguit
20 D-E-G-U-I-T.

21 **JUDGE GERGEL:** These are staffers?

22 **MR. HINDLEY:** They were staffers involved in the
23 map room.

24 **JUDGE GERGEL:** But do you have reason to believe
25 they were using their private emails? We're talking about

1 private emails now.

2 **MR. HINDLEY:** Many of these staffers we don't
3 even have their state house emails.

4 **JUDGE GERGEL:** Okay. What about their -- how
5 about the staff -- the mappers' state house emails,
6 Ms. Hollingsworth?

7 **MS. HOLLINGSWORTH:** Your Honor, if I could? So
8 Thomas Hauger is the GIS Director. He was -- supervised
9 the map room. We have provided all of his documents and
10 information and his custodial files. We've done all that.
11 He's employed for the specific purpose of running the map
12 room. And that's what he did and we provided all of his
13 information.

14 The three individuals were interns that we
15 identified in discovery. They were, as we call them, map
16 room technician or clickers. Their sole responsibility
17 was they just sat and they clicked the button at the
18 direction of a legislator who was asking them to operate
19 the software. They were short-term employees. They don't
20 have emails. They didn't even speak. So there isn't
21 anything, any information or discovery that these three
22 interns would have. They clicked buttons at the direction
23 of a legislator.

24 **JUDGE GERGEL:** What was your staff of people who
25 weren't interns? Who was in the map room other than --

1 who was the person who was head of the map room?

2 **MS. HOLLINGSWORTH:** Mr. Hauger. This is
3 Jennifer Hollingsworth. Thomas Hauger was the GIS
4 Director that oversaw the map room. We've provided all of
5 his document and information. Ms. Emma Dean, who is chief
6 counsel to the House Judiciary Committee, she was the sort
7 of lead attorney that oversaw the entire process. And she
8 was the custodian of the most documents because that was
9 what she did. And we produced nearly 2,000 records
10 related to her. Then her sort of assistant counsel were
11 Roland Franklin and Jimmy Hinson. Both of their files
12 were pulled and produced. They are, again, staff
13 employees, staff counsel to the House Judiciary Committee.
14 And then Patrick Dennis, who is general counsel and Chief
15 of Staff to the Speaker of the House. Again, an employee
16 of the House and we provided all of his documents and
17 information and communications in discovery.

18 **JUDGE GERGEL:** And that includes their
19 legislative email?

20 **MS. HOLLINGSWORTH:** Yes, Your Honor. And they
21 are employees, so that is their email. So, Your Honor,
22 our position, of course, would be that to the extent we're
23 dealing with personal emails, it only relates to
24 legislators who, by the way, are the only people that
25 could vote on, of course, the act at issue. And because

1 they are not full-time employees of the House, that is the
2 reason why they would have had a non-house email where
3 they may or may not -- and they will undertake as the
4 Court's directed a search of what they have. So the
5 suggestion that we should go outside of these legislators,
6 I just don't understand.

7 **JUDGE GERGEL:** I hear you, Ms. Hollingsworth.

8 So, Mr. Hindley, help me with this. Do you have
9 any indication -- I saw some of the evidence you pointed
10 out that certain legislators were sending things to and
11 from their law firms or their private emails. I get that.
12 Do you have any evidence that any of these staff members
13 were using private emails?

14 **MR. HINDLEY:** Well, Your Honor, I think it's
15 important to take a step back and say we need to
16 understand the subjective intent of the House when they
17 passed these -- passed the House lines. And we don't know
18 what don't know. And it's possible they could have been
19 discussing the redistricting, both the legislators and the
20 staff members, on the personal accounts and in text
21 messages given that --

22 (Indiscernible crosstalk.)

23 **JUDGE GERGEL:** But, Mr. Hindley --

24 (Indiscernible crosstalk.)

25 **JUDGE GERGEL:** This is what they call a fishing

1 expedition. Here's what you need to do. Take their
2 depositions and ask them, Did you communicate in private
3 emails? If they did, request them. But simply asking
4 these folks for their private emails when you don't have
5 any evidence they were communicating privately just
6 strikes me as overly intrusive. I mean, to the extent you
7 have any indication like you pointed out that some of
8 these legislators were communicating to and from their law
9 firms, fair enough. Good point. But these staffers, just
10 go take -- Mr. Hindley, let me ask you, how many
11 depositions have the plaintiffs taken of these fact
12 witnesses?

13 **MR. HINDLEY:** We've -- next week we're holding a
14 number of depositions on a number of individuals. But
15 we're only limited to 15. And I would want --

16 **JUDGE GERGEL:** Why are you limited to 15?

17 **MR. HINDLEY:** That's what the parties agreed on.

18 **JUDGE GERGEL:** Well, that's your agreement. I
19 mean, fine. If that's what you want to do, that's your
20 business. But, you know, just -- you know, people are
21 going to do everything on discovery -- I mean, on paper
22 discovery, go take people's depositions. Ask them
23 questions. They won't say anything to you. It seems to
24 me the art of discovery is, you know, is not all like the
25 redcoats just marching down the center. You've got to be

1 a little creative. And, you know, I think you're close to
2 exhausting your written discovery. Go get depositions.
3 And if you learn stuff that you need more and you haven't
4 captured it, that's when you come. But just sending
5 everybody on a fishing expedition, I don't get it.

6 **MR. HINDLEY:** Well, Your Honor, I would just add
7 that it was not a fishing expedition. They admitted in
8 their filings and just now that members of the staff did
9 use personal communications --

10 **JUDGE GERGEL:** I didn't hear them say that.
11 (Indiscernible crosstalk.)

12 **MR. HINDLEY:** They also said that --
13 (Indiscernible crosstalk.)

14 **JUDGE GERGEL:** I didn't hear that.

15 **MR. HINDLEY:** Ms. Hollingsworth just said that
16 staffers used non-house emails because they were part-time
17 employees for the redistricting process.

18 **MS. HOLLINGSWORTH:** I did not say that at all
19 actually, Your Honor.

20 **JUDGE GERGEL:** I didn't hear you say it either,
21 Ms. Hollingsworth.

22 If you think these clickers were getting private
23 emails, go take their depositions. And if they say, yeah,
24 I was using it, you got it. You'll get it. But I didn't
25 hear her say that. She just said they were following the

1 instructions -- they were interns sitting there. And they
2 said draw the map, put that precinct in, take that
3 precinct out. I mean, suggesting that the interns are
4 going to be the key to your case, I mean, you better have
5 a better case than that.

6 **MR. HINDLEY:** Apologies, Your Honor. I misheard
7 Ms. Hollingsworth.

8 **JUDGE GERGEL:** Yeah, I didn't hear her say
9 anything like that.

10 Okay. I've kind of worked through the list that
11 my colleagues and I had been concerned about.

12 Judge Seymour, do you have any additional
13 questions?

14 **JUDGE SEYMOUR:** I do not have any additional
15 questions. Thank you very much.

16 **JUDGE GERGEL:** Judge Heytens, do you have any
17 additional questions?

18 **JUDGE HEYTENS:** I do not.

19 **JUDGE GERGEL:** Okay.

20 Folks, thank you for this. And please, y'all
21 talk to each other. Show courtesy to each other. Work
22 with each other. I think a lot of this could be worked
23 out by y'all, you know, in a non-adversarial way working
24 with each other. I don't know all of the counsel, but I
25 do know many of you. And you are honorable, decent,

1 hardworking people. And I think if y'all just talk to
2 each other, a lot of this conflict could be avoided.

3 Okay. Are there further matters to come before
4 the Court at this point, Mr. Hindley?

5 **MR. HINDLEY:** No, Your Honor. We're all set on
6 plaintiff's side.

7 **JUDGE GERGEL:** Okay.

8 And Ms. Hollingsworth?

9 **MS. HOLLINGSWORTH:** Your Honor, if I could have
10 a question and then a request to clarify the timeframe?

11 **JUDGE GERGEL:** Yes, ma'am.

12 **MS. HOLLINGSWORTH:** In terms of for us to engage
13 with both the party defendants and then reaching out to
14 the Ad Hoc Committee members and asking them to undertake
15 the search and the certification, what timing is the Court
16 expecting of that? I mean, we've -- part of the issue
17 here is written discovery. We've got about -- all
18 discovery, I'm sorry, all discovery closes by next Friday.

19 **JUDGE GERGEL:** Well, we can extend it to comply
20 with these instructions. But the Ad Hoc Committee, how
21 much time do you need to get them to do their search?
22 What do you think is reasonable, Ms. Hollingsworth?

23 **MS. HOLLINGSWORTH:** I would suggest maybe not
24 everyone -- we might need a little bit of time because I
25 don't want to make assumptions about the tech savvy

1 abilities of folks. So I want to make sure that I and we
2 give them all the assistance they need to walk through the
3 process. So I certainly think today I struggled with
4 dates, Your Honor. Today's Tuesday. So if we could have
5 a week?

6 **JUDGE GERGEL:** One week is fine. Okay. And
7 what was your other question? That's for your Ad Hoc
8 Committee and your House Defendants? What else?

9 **MS. HOLLINGSWORTH:** And Your Honor, my other
10 question was simply, I know the Court has reviewed all of
11 the motions. Is the Court going to just otherwise rule on
12 the various issues?

13 **JUDGE GERGEL:** Yeah, we've got -- you know,
14 we've -- we've -- you gave us enough information and we
15 will address those in an order, yes.

16 **MS. HOLLINGSWORTH:** Thank you, Your Honor.

17 **JUDGE GERGEL:** Anything further?

18 (There was no response.)

19 **JUDGE GERGEL:** Okay, folks.

20 **MS. HOLLINGSWORTH:** Your Honor, sort of a
21 housekeeping matter. We did wonder -- one of my
22 colleagues is making me ask the question. But does the
23 Court have an expectation whether or not the trial in May
24 may be held in Columbia or will it be in Charleston or
25 some other location?

1 JUDGE GERGEL: It will be in Charleston.

2 MS. HOLLINGSWORTH: Okay. Thank you, Your
3 Honor.

4 JUDGE GERGEL: Okay.

5 Very good, folks. With that, this hearing is
6 adjourned. Thank you.

7 MS. HOLLINGSWORTH: Thank you.

8 MR. BRYANT: Thank you, Your Honor.

9 (WHEREUPON, court was adjourned at 4:23 PM)

10 ***

11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter.

13 s/Karen E. Martin 4/15/2022

14 Karen E. Martin, RMR, CRR Date _____

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